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RAL9-99-0073



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	:	Before the Examiner:
Alexander, Jr. et al.	:	Philpott, Justin M.
Serial No.: 09/513,518	:	Group Art Unit: 2665
Filed: February 25, 2000	:	
Title: PORTABLE NETWORKING	:	IBM Corporation
INTERFACE METHOD AND	:	Dept. 9CCA/Bddg. 002-2
APPARATUS FOR DISTRIBUTED	:	3039 Cornwallis Road
SWITCHING SYSTEM	:	Research Triangle Park, NC 27709

### REQUEST FOR REINSTATEMENT OF APPEAL

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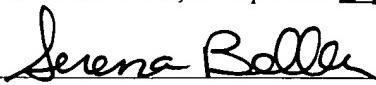
Dear Sir:

In response to the Office Action (Paper No. 12) having a mailing date of July 26, 2004, reopening prosecution of the above-referenced Application, Applicants respectfully request reinstatement of the Appeal.

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### CERTIFICATION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on September 24, 2004.

  
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Serena Beller  
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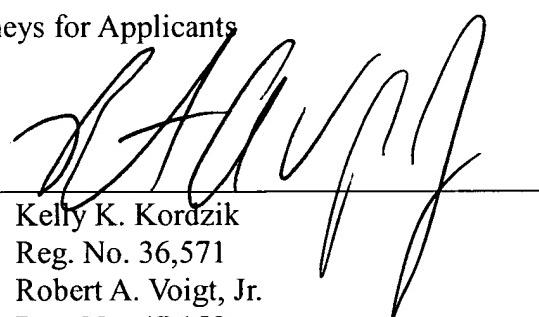
A supplemental appeal brief is filed herewith. M.P.E.P. §1208.02.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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**SUPPLEMENTAL APPEAL BRIEF**

Mail Stop Appeal Brief-Patents  
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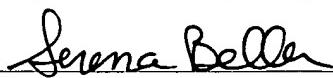
Dear Sir:

This supplemental brief is being submitted pursuant to 37 C.F.R. §41.37.

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**CERTIFICATION UNDER 37 C.F.R. §1.8**

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Signature

Serena Beller  
(Printed name of person certifying)

**I. INCORPORATION BY REFERENCE**

Appellants hereby incorporate herein by reference Sections I-V and VIII-IX of Appellants' Brief mailed on May 17, 2004.

**II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 35-38, 43-46, 51-54, 56-59 and 61-64 stand rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann et al. (U.S. Patent No. 6,516,355) (hereinafter "Hartmann"). Claims 39-42, 47-50, 55, 60 and 65-68 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hartmann.

**III. ADDITIONAL ARGUMENT****A. Claims 35-38, 43-46, 51-54, 56-59 and 61-64 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.**

The Examiner has rejected claims 35-38, 43-46, 51-54, 56-59 and 61-64 under 35 U.S.C. §102(e) as being anticipated by Hartmann. Paper No. 12, page 2. Appellants respectfully traverse for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

For a claim to be anticipated under 35 U.S.C. §102, each and every claim limitation must be found within the cited prior art reference and arranged as required by the claim. M.P.E.P. §2131.

**1. Claims 35, 43 and 61 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.**

Appellants respectfully assert that Hartmann does not disclose "a network switch comprising a CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites element 100 in Figure 4 of Hartmann as disclosing a CPU. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead

discloses that element 100 is a switching engine. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a switching engine is equivalent to a CPU within a network switch. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that a switching engine is equivalent to a CPU within a network switch, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a network switch comprising a memory system having circuitry operable to attach to the CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites element 108 in Figure 4 of Hartmann as disclosing a memory system attached to element 100. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 108 are data files. Column 5, line 60. These data files do not appear to be stored within a network switch. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that data files (element 108) are equivalent to a memory system within a network switch. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that data files (element 108) are equivalent to a memory system within a network switch, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a switch fabric system having circuitry operable to attach to the CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites element 102 of Hartmann as disclosing a switch fabric system attached to element 100. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 102 is a switch which communicates with switching engine 100. Column 5, lines 2-3. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that switch 102 and switching engine 100 are equivalent to a switch fabric system within a network switch that has circuitry operable to attach to a CPU. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that switch 102 and switching engine 100 are equivalent to a switch fabric system within a network switch that has circuitry operable to attach to a CPU, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a port controller having circuitry operable to attach to the switch fabric system" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites either element 118 or element 128 of Hartmann as being a port controller and element 102 of Hartmann as being a switch fabric system. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 118 provides the logic necessary to communicate with the switching matrix. Column 5, lines 35-36. Hartmann further discloses that element 128 provides the logic necessary to manage transactions with switch 102 over an OA&M interface. Column 5, lines 57-59. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that providing the logic necessary to communicate with a switching matrix or that

providing the logic necessary to manage transactions with a switch over an OA&M interface is equivalent to a port controller. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that providing the logic necessary to communicate with a switching matrix or that providing the logic necessary to manage transactions with a switch over an OA&M interface is equivalent to a port controller, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a software application operable to execute on the CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites either elements 110, 112 and 114 of Hartmann as being a software application operable to execute on a CPU. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 110 is a connection API translator as well as discloses that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a Forwarding Database Distribution Library (FDDL) system operable to execute on the CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites element 124 of Hartmann as being an FDDL system. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 124 is an object server interface translator which provides the logic necessary to convert object server API messages from the MMI into native switch operation, administration, and maintenance messages into object server API messages. Column 5, lines 46-50. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator, as described above, is an FDDL system. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator, as described above, is an FDDL system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a switch device driver operable to execute on the CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites either element 116 or 126 of Hartmann as a switch device driver. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver operable to execute on a CPU. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a

call control transaction manager or a native switch OA&M transaction manager is a switch device driver operable to execute on a CPU, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "wherein the software application is operable to communicate with the FDDL system, the FDDL system is operable to communicate with the switch device driver, and the switch device driver is operable to communicate with the switch fabric" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites either element 110, 112 or 114 of Hartmann as disclosing a software application; element 124 of Hartmann as disclosing an FDDL system; element 116 or 126 of Hartmann as disclosing a switch device driver and element 102 of Hartmann as disclosing a switch fabric. Paper No. 12, page 3. Appellants respectfully traverse for at least the above-stated reasons. Accordingly, Hartmann does not disclose all of the limitations of claims 35, 43 and 61, and thus Hartmann does not anticipate claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a protocol means for providing a service to a network system" as recited in claim 43. The Examiner cites either elements 110, 112 or 114 of Hartmann as disclosing the above-cited claim limitation. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. Column 5, lines 15-27. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator has protocol means for providing a service to a network system. *Ex parte*

*Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator has protocol means for providing a service to a network system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 43. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a backbone" as recited in claim 61. The Examiner states that a coupling between elements 106 and 100 in Figure 4 of Hartmann discloses a backbone within a network system. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 106 corresponds to a man-machine interface and that element 100 corresponds to a switching engine. Figure 4 of Hartmann. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that the interconnection between a man-machine interface and a switching engine discloses a backbone within a network system. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that the interconnection between a man-machine interface and a switching engine discloses a backbone within a network system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a workstation" as recited in claim 61. The Examiner cites element 106 of Hartmann as disclosing a workstation within a network system. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 106 is a man-

machine interface of a development system. Column 5, line 5. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a man-machine interface of a development system is a workstation within a network system. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a man-machine interface of a development system is a workstation within a network system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "wherein the workstation is logically connected to the backbone, and wherein the backbone is logically connected to the port controller of the network switch" as recited in claim 61. The Examiner cites element 106 of Hartmann as a workstation; the coupling between elements 106 and 100 of Hartmann as a backbone and either element 118 or 128 of Hartmann as a port controller. Paper No. 12, page 4. Appellants respectfully traverse for at least the above-stated reasons. Thus, Hartmann does not disclose all of the limitations of claim 61, and thus Hartmann does not anticipate claim 61. M.P.E.P. §2131.

2. Claims 51 and 56 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "receiving information at a port controller in a first protocol from a first node machine" as recited in claim 51 and similarly in claim 56. The Examiner cites element 128 of Hartmann as disclosing a port controller as well as column 3, line 45-column 4, line 65 and column 5, lines 11-40 of Hartmann as disclosing a first protocol and element

106 of Hartmann as disclosing a first node machine. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead discloses that element 128 corresponds to a switch operation, administration and maintenance (OA&M). The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a switch operation, administration and maintenance corresponds to a port controller. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a switch operation, administration and maintenance corresponds to a port controller, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Further, there is no language in the cited passage in Hartmann that discloses that the switch OA&M receives information in a protocol. Thus, Hartmann does not disclose all of the limitations of claims 51 and 56, and thus Hartmann does not anticipate claims 51 and 56. M.P.E.P. §2131.

Further, Hartmann instead discloses that element 106 is a man-machine interface. Column 5, lines 5. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a man-machine interface corresponds to a node where a port controller received information from that node. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a man-machine interface corresponds to a node where a port controller received information from that node, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the

Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "communicating the information from the port controller to a switch fabric" as recited in claim 51 and similarly in claim 56. The Examiner cites element 128 of Hartmann as disclosing a port controller and element 102 of Hartmann as disclosing a switch fabric. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead discloses that element 128 is a switch OA&M. Column 5, line 57. Hartmann further discloses that element 102 is a switch. Column 5, line 3. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a switch OA&M corresponds to a port controller that communicates with element 102 that corresponds to a switch fabric. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a switch OA&M corresponds to a port controller that communicates with element 102 that corresponds to a switch fabric, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "communicating the information from the switch fabric to a switch device driver within an operating system" as recited in claim 51 and similarly in claim 56. The Examiner cites element 102 of Hartmann as disclosing a switch fabric and element 126 of Hartmann as disclosing a switch device driver. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead discloses that element 102 is a switch. Column 5, line 3. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. Hartmann does not disclose that information from the switch is communicated to the native switch OA&M transaction manager within an operating system. Thus, Hartmann does not disclose all of the limitations of claims 51 and 56, and thus Hartmann does not anticipate claims 51 and 56. M.P.E.P. §2131.

Furthermore, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a switch (element 102 of Hartmann) corresponds to a switch fabric, where information from the switch is communicated to a native switch OA&M transaction manager, which corresponds to a switch device driver, within an operating system. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a switch (element 102 of Hartmann) corresponds to a switch fabric, where information from the switch is communicated to a native switch OA&M transaction manager, which corresponds to a switch device driver, within an operating system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "communicating the information from the switch device driver to a Forwarding Database Distribution Library (FDDL)" as recited in claim 51 and similarly in claim 56. The Examiner cites element 126 of Hartmann as disclosing a switch device driver and element 124 of Hartmann as disclosing a FDDL. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead discloses that element 126 corresponds to a native switch OA&M. Column 5, line 56. Hartmann further discloses that element 124 corresponds to an object server interface translator. Column 5, line 63.

The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a native switch OA&M corresponds to a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a native switch OA&M corresponds to a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Further, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "communicating the information from the FDDL to a first protocol client" as recited in claim 51 and similarly in claim 56. The Examiner cites element 124 of Hartmann as disclosing an FDDL and element 106 of Hartmann as disclosing a first protocol client. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead discloses that element 124 corresponds to an object server interface translator. Column 5, line 63. Hartmann further discloses that element 106 corresponds to a man-machine interface. Column 5, line 5.

The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Further, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a man-machine interface is a first protocol client. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a man-machine interface is a first protocol client, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

3. Claims 36 and 62 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "a second software application operable to execute on the CPU, wherein the second software application communicates with the FDDL system" as recited in claim 36 and similarly in claim 62. The Examiner cites either element 110, 112 or 114 of

Hartmann as disclosing the above-cited claim limitation. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. Column 5, lines 15-20. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 36 and 62. M.P.E.P. §2131.

Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 36 and 62. M.P.E.P. §2131.

4. Claim 44 is not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "a second protocol means for providing a second service to the network system, wherein the FDDL means communicates with the second protocol means" as recited in claim 44. The Examiner cites either element 110, 112 or 114 of Hartmann as disclosing the above-cited claim limitation. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. Column 5, lines 15-20. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is a protocol means for providing a service to a network system. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is a protocol means for providing a service to a network system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 44. M.P.E.P. §2131.

Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so

recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 44. M.P.E.P. §2131.

5. Claims 52 and 57 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "receiving additional information at a port controller in a second protocol from a first node machine; communicating the additional information from the port controller to a switch fabric; communicating the additional information from the switch fabric to a switch device driver within an operating system; communicating the additional information from the switch device driver to a Forwarding Database Distribution Library (FDDL); and communicating the additional information from the FDDL to a second protocol client" as recited in claim 52 and similarly in claim 57. The Examiner has not presented any evidence that Hartmann discloses any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claims 52 and 57. M.P.E.P. §2131.

6. Claims 37, 45 and 63 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "wherein the FDDL system defines an FDDL API for communication with the software application, and the FDDL system defines a Switch Services API for communication with the switch device driver" as recited in claim 37 and similarly in claims 45 and

63. The Examiner cites column 3, line 1 – column 5, line 40, Figure 4 and elements 110, 112 and 114 of Hartmann as disclosing a software application comprising an API. Paper No. 12, page 5. The Examiner further states that the switch device driver inherently comprises an API by its coupling to elements 110, 112 and 114 of Hartmann. Paper No. 12, page 5. Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. The Examiner further cites either elements 110, 112 or 114 as disclosing a software application. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead teaches that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 37, 45 and 63. M.P.E.P. §2131.

Furthermore, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator defines an FDDL API for communication with a software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator defines an FDDL API for communication with a software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the

Examiner has not presented a *prima facie* case of anticipation in rejecting claims 37, 45 and 63. M.P.E.P. §2131.

Furthermore, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator defines a Switch Services API for communication with a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator defines a Switch Services API for communication with a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 37, 45 and 63. M.P.E.P. §2131.

Furthermore, Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. Column 5, lines 15-27. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 37, 45 and 63. M.P.E.P. §2131.

Furthermore, the Examiner cites either element 116 or 126 of Hartmann as a switch device driver. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 37, 45 and 63. M.P.E.P. §2131.

7. Claims 38, 46 and 64 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "wherein the FDDL system defines an FDDL API for communication with the software application and the second software application, and the FDDL system defines a Switch Services API for communication with the switch device driver" as recited in claim 38 and similarly in claims 46 and 64. The Examiner cites column 3, line 1 – column 5, line 40, Figure 4 and elements 110, 112 and 114 of Hartmann as disclosing a software application comprising an API. Paper No. 12, page 5. The Examiner further states that the switch device driver inherently comprises an API by its coupling to elements 110, 112 and 114 of Hartmann. Paper No. 12, page 5. Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. The Examiner further cites either elements 110, 112 or 114 as disclosing a software application. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead teaches that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 38, 46 and 64. M.P.E.P. §2131.

Furthermore, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator defines an FDDL API for communication with a first and a second software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator defines an FDDL API for communication with a first and a second software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 38, 46 and 64. M.P.E.P. §2131.

Furthermore, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator defines a Switch Services API for communication with a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator defines a Switch Services API for communication with a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49

U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 38, 46 and 64. M.P.E.P. §2131.

Furthermore, Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. Column 5, lines 15-27. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 38, 46 and 64. M.P.E.P. §2131.

Furthermore, the Examiner cites either element 116 or 126 of Hartmann as a switch device driver. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169

F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 38, 46 and 64. M.P.E.P. §2131.

8. Claims 53 and 58 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "all communicating between the switch device driver to the FDDL is done through a switch services API; and all communicating from the FDDL to the first protocol client and the second protocol client is done through an FDDL API " as recited in claim 53 and similarly in claim 58. The Examiner cites column 3, line 1 – column 5, line 40, Figure 4 and elements 110, 112 and 114 of Hartmann as disclosing a software application comprising an API. Paper No. 12, page 5. The Examiner further states that the switch device driver inherently comprises an API by its coupling to elements 110, 112 and 114 of Hartmann. Paper No. 12, page 5. Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. The Examiner further cites either elements 110, 112 or 114 as disclosing a software application. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead teaches that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 53 and 58. M.P.E.P. §2131.

Furthermore, the Examiner cites either element 116 or 126 of Hartmann as a switch device driver. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 53 and 58. M.P.E.P. §2131.

Further, the Examiner had cited to column 3, line 1 – column 5, line 40 of Hartmann as teaching a switch services API. Paper No. 12, page 5. However, Appellants were unable to identify any language in the cited passage as teaching a switch services API. Appellants respectfully assert that there is no relevance of the cited passage to a switch services API where communication between a switch device driver to the FDDL is done through a switch services API. The Examiner must clearly explain the relevance of the cited passage to a switch services API where communication between a switch device driver to the FDDL is done through a switch services API. 37 C.F.R. §1.104(c)(2). Thus, Hartmann does not disclose all of the limitations of claims 53 and 58, and thus Hartmann does not anticipate claims 53 and 58. M.P.E.P. §2131.

Furthermore, the Examiner has not presented any evidence that Hartmann discloses "all communicating from the FDDL to the first protocol client and the

second protocol client is done through an FDDL API." The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claims 53 and 58. M.P.E.P. §2131.

9. Claims 54 and 59 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "defining a switch services API for communication between the switch device driver; and defining an FDDL API for communication between the first protocol client and the FDDL" as recited in claim 54 and similarly in claim 59. The Examiner cites column 3, line 1 – column 5, line 40, Figure 4 and elements 110, 112 and 114 of Hartmann as disclosing a software application comprising an API. Paper No. 12, page 5. The Examiner further states that the switch device driver inherently comprises an API by its coupling to elements 110, 112 and 114 of Hartmann. Paper No. 12, page 5. Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. The Examiner further cites either elements 110, 112 or 114 of Hartmann as disclosing a software application. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead teaches that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49

U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 54 and 59. M.P.E.P. §2131.

Furthermore, the Examiner cites either element 116 or 126 of Hartmann as a switch device driver. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 54 and 59. M.P.E.P. §2131.

Further, the Examiner had cited to column 3, line 1 – column 5, line 40 of Hartmann as teaching a switch services API. Paper No. 12, page 5. However, Appellants were unable to identify any language in the cited passage as teaching a switch services API. Appellants respectfully assert that there is no relevance of the cited passage to a switch services API where communication between a switch device driver to the FDDL is done through a switch services API. The Examiner must clearly explain the relevance of the cited passage to a switch services API where communication between a switch device driver to the FDDL is done through a switch services API. 37 C.F.R. §1.104(c)(2). Thus, Hartmann does not disclose all of the

limitations of claims 54 and 59, and thus Hartmann does not anticipate claims 53 and 58. M.P.E.P. §2131.

Furthermore, the Examiner has not presented any evidence that Hartmann discloses "defining an FDDL API for communication between the first protocol client and the FDDL." The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claims 54 and 59. M.P.E.P. §2131.

B. Claims 39-42, 47-50, 55, 60 and 65-68 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Hartmann.

The Examiner has rejected claims 39-42, 47-50, 55, 60 and 65-68 under 35 U.S.C. §103(a) as being unpatentable over Hartmann. Paper No. 12, page 5. Appellants respectfully traverse for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

1. The Examiner has not presented any objective evidence for modifying Hartmann and therefore claims 39, 42, 47, 50, 55, 60, 65 and 68 are patentable over Hartmann.

A *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembicczak*, 50 U.S.P.Q.2d. 1614, 1617 (Fed. Cir. 1999). Broad

conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner's motivation for modifying Hartmann (1) to have an FDDL system that comprises a base FDDL system, a software application tower FDDL system and a second software application tower FDDL system, as recited in claim 39 and similarly in claim 65; (2) to have a base FDDL means, a protocol tower means and a second protocol tower means, as recited in claim 47; (3) to have an FDDL base within the FDDL and a first protocol FDDL tower within the FDDL, as recited in claim 55 and similarly in claim 60, is because "such configurations are well known in the art of network switching." Paper No. 12, page 6. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

Firstly, Appellants traverse the assertion that having a base FDDL system or a software application tower FDDL system is well known in the art. The Examiner has not provided any evidence that having a base FDDL system or a software application tower FDDL system is well known in the art but merely relies upon his own subjective opinion which is insufficient. The Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his conclusion. *See In re Soli*, 317 F.2d 941, 946, 137 U.S.P.Q. 797, 801 (C.C.P.A. 1963); M.P.E.P. §2144.03. Appellants respectfully assert that the Examiner must produce evidentiary authority to support his assertion. *See In re Zurko*, 258 F.3d 1379, 1386, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001).

Secondly, the Examiner must submit objective evidence for modifying Hartmann as indicated above in order to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). There is no suggestion in Hartmann of having a base FDDL system. Neither is there any suggestion in

Hartmann of having a software application tower FDDL system. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 39, 42, 47, 50, 55, 60, 65 and 68. *Id.*

As a result of the foregoing, Appellants respectfully assert that the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 39, 42, 47, 50, 55, 60, 65 and 68. M.P.E.P. §2143.

2. Claims 39 and 65 are patentable over Hartmann.

Appellants respectfully assert that Hartmann does not teach or suggest "wherein the base FDDL system communicates with the switch device driver, the software application communicates with the software application tower FDDL system, the second software application communicates with the second software application tower FDDL system, and the base FDDL system communicates with the software application tower FDDL system and the second software application tower FDDL system" as recited in claim 39 and similarly in claim 65. The Examiner has not presented any evidence that Hartmann teaches any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of obviousness in rejecting claims 39 and 65. M.P.E.P. §2143.

2. Claims 42 and 68 are patentable over Hartmann.

Appellants respectfully assert that Hartmann does not teach or suggest "wherein the base FDDL system communicates with the switch device driver, the software application communicates with the software application tower FDDL system, the second software application communicates with the second software application tower FDDL system, and the base FDDL system communicates with the software application tower FDDL system and the second software application tower FDDL system" as recited in claim 42 and similarly in claim 68. The Examiner has not presented any evidence that Hartmann teaches any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of obviousness in rejecting claims 42 and 68. M.P.E.P. §2143.

3. Claim 47 is patentable over Hartmann.

Appellants respectfully assert that Hartmann does not teach or suggest "a base FDDL means for communicating with the switch device driver means; a protocol tower FDDL means for communicating with the protocol means and the base FDDL means; and a second protocol tower FDDL means for communicating with a second protocol means and the base FDDL means" as recited in claim 47. The Examiner has not presented any evidence that Hartmann teaches any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of obviousness in rejecting claim 47. M.P.E.P. §2143.

4. Claim 50 is patentable over Hartmann.

Appellants respectfully assert that Hartmann does not teach or suggest that "a base FDDL means for communicating with the switch device driver means; a protocol tower FDDL means for communicating with the protocol means and the base FDDL means; and a second protocol tower FDDL means for communicating with the second protocol means and the base FDDL means" as recited in claim 50. The Examiner has not presented any evidence that Hartmann teaches any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of obviousness in rejecting claim 50. M.P.E.P. §2143.

5. Claims 55 and 60 is patentable over Hartmann.

Appellants respectfully assert that Hartmann does not teach or suggest "receiving the information from the switch device driver at an FDDL base within the FDDL; passing the information from the FDDL base to a first protocol FDDL tower within the FDDL; and sending the information from the first protocol FDDL tower to the first protocol client" as recited in claim 55 and similarly in claim 60. The Examiner has not presented any evidence that Hartmann teaches any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of obviousness in rejecting claims 55 and 60. M.P.E.P. §2143.

6. Claims 40-41, 48-49 and 66-67 are not dependent from claims 39, 47 and 65 and therefore should not be rejected under 35 U.S.C. §103(a) as being unpatentable over Hartmann.

The Examiner has rejected claims 40-41, 48-49 and 66-67 under 35 U.S.C. §103(a) as being unpatentable over Hartmann. Paper No. 12, page 6. However, claims 40-41, 48-49 and 66-67 are not dependent upon claims 39, 47 and 65 which were rejected under 35 U.S.C. §103(a) as being unpatentable over Hartmann since Hartmann does not specifically disclose an FDDL system that comprises a base FDDL system and a software application tower FDDL system. Paper No. 12, page 5. Instead, the Examiner is asserting that Hartmann discloses each and every claim limitation of claims 40-41, 48-49 and 66-67 as well as the claims upon which they depend, claims 35, 43 and 61, respectively. Accordingly, the Examiner should be rejecting claims 40-41, 48-49 and 66-67 under 35 U.S.C. §102(e) as being anticipated by Hartmann and not rejecting claims 40-41, 48-49 and 66-67 under 35 U.S.C. §103(a) as being unpatentable over Hartmann. Appellants will be addressing the rejections of claims 40-41, 48-49 and 66-67 as if they were rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

7. Claims 40-41, 48-49 and 66-67 are not anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "an independent software application operable to operate to execute on the CPU" as recited in claim 40 and similarly in claim 66. The Examiner cites either element 110, 112 or 114 of Hartmann as disclosing the above-cited claim limitation. Paper No. 12, page 6. Appellants respectfully traverse and assert that Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band

signaling API translator is an independent software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is an independent software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 40 and 66. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "an independent software application shim operable to execute on the CPU" as recited in claim 40 and similarly in claim 66. The Examiner cites element 120 of Hartmann as disclosing the above-cited claim limitation. Paper No. 12, page 6. Appellants respectfully traverse and assert that Hartmann instead discloses that element 120 is a logical device management that provides the logic necessary to manage per-device information. Column 5, lines 33-34. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a logical device management that provides the logic necessary to manage per-device information discloses an independent software application shim. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a logical device management that provides the logic necessary to manage per-device information discloses an independent software application shim, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 40 and 66. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "wherein the independent software application communicates with the independent software

application shim and the independent software application shim communicates with the switch device driver" as recited in claim 40 and similarly in claim 66. The Examiner cites either element 110, 112 or 114 of Hartmann as disclosing an independent software application; element 120 of Hartmann as disclosing a software application shim; and element 116 of Hartmann as disclosing a switch device driver. Paper No. 12, page 6. Appellants respectfully traverse.

Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is an independent software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is an independent software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 40 and 66. M.P.E.P. §2131.

Furthermore, Hartmann instead discloses that element 120 is a logical device management that provides the logic necessary to manage per-device information. Column 5, lines 33-34. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a logical device management that provides the logic necessary to manage per-device information discloses an independent software application shim. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a logical device management that provides the logic necessary to manage per-

device information discloses an independent software application shim, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 40 and 66. M.P.E.P. §2131.

Furthermore, Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager is a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a call control transaction manager is a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 40 and 66. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a second software application operable to execute on the CPU, wherein the FDDL system defines an FDDL API for communication with the software application and the second software application, and the FDDL system defines a Switch Services API for communication with the switch device driver" as recited in claim 41 and similarly in claim 67. The Examiner has not presented any evidence that Hartmann discloses any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claims 41 and 67. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "an independent protocol means for providing an independent service to the network system; and an independent protocol shim for communicating with the independent protocol means and the switch device driver means" as recited in claim 48. The Examiner has not presented any evidence that Hartmann discloses any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claim 48. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a second protocol means for providing a second service to the network system, wherein the FDDL means communicates with the second protocol means" as recited in claim 49. The Examiner has not presented any evidence that Hartmann discloses any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claim 49. M.P.E.P. §2131.

IV. CONCLUSION

For the reasons noted above, the rejections of claims 35-68 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 35-68.

Respectfully submitted,

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